



Attorney General
Anthony J. Celebrezze, Jr.

June 26, 1985

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ENFORCEMENT DIVISION

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APR 26 2010

Federal Communications Commission
Office of the Secretary

Margaret Wood, Esquire
Federal Communications Commission
Room 6202
1919 M Street, NW
Washington, DC 20554

Dear Ms. Wood:

This is in response to the FCC communication of May 15, 1985, requesting certification of Ohio's state regulatory authority over pole attachments, pursuant to Section 1.1414(a)(3), 47 C.F.R. Section 1.1414(a)(3).

The Public Utilities Commission of Ohio, as represented by the Attorney General of Ohio, Public Utilities Section, hereby certifies that it has issued and made effective Rules and Regulations implementing the state's regulatory authority over pole attachments, issued a specific methodology for such regulation and makes such publicly available in the State. In regulating pole attachments, the Commission considers the interests of the subscribers of cable television service as well as the interests of the consumers of the utility services.

In support of the above certification, the following documents are enclosed:

- Section 4905.71 and 4905.72, Ohio Revised Code, enacting the PUCO's authority to regulate pole attachments and establishing the ratemaking parameters.
- Commission Entry, dated March 31, 1982, in Case No. 81-1109-AU-UNC, establishing pole attachment tariff requirements for telephone, telegraph and electric utilities.
- Commission Opinion and Order in Case No. 81-1058-EL-AIR, dated November 5, 1982, which establishes the specific methodology for determining pole attachments and related charges.

Please advise this office concerning satisfactory compliance with your recently amended rules and/or additional requirements with which it is necessary to comply.

Very truly yours,

A handwritten signature in cursive script, reading "Mary R. Brandt".

MARY R. BRANDT
Assistant Attorney General
180 East Broad Street
Columbus, Ohio 43215
(614) 466-4395

MRB/nk
Encs.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554
May 15, 1985

IN REPLY REFER TO:

Public Utility Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Attn: Mary R. Brandt, Assistant Attorney General

Gentlemen:

The Commission is again updating its list of states which have certified that they regulate pole attachment rates, terms, and conditions to insure that all certifications comply with amended Section 1.1414 of the Commission's Rules, 47 C.F.R. §1.1414. That Section was recently amended to implement certain provisions of the Cable Communications Policy Act of 1984. Report and Order in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985). Among the amendments is new Section 1.1414(a)(3), 47 C.F.R. §1.1414(a)(3), which provides that a state regulating pole attachments must certify to this Commission that

It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state)

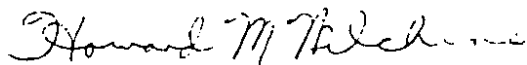
With the exception of a statement about methodology, your certification already includes all of the required information. Accordingly, if your state's rules and regulations include a specific methodology which has been made publicly available in the state, please so certify to the Commission by May 30, 1985.

Receipt of such information by May 30, 1985, will permit the Commission to retain your state on our certification list. Therefore, your prompt attention and cooperation are appreciated.

Please address your certification and any inquiries to:

Federal Communications Commission
Attention: Margaret Wood, Esq.
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554
Telephone (202) 632-4890

Sincerely,



Howard M. Wilchins
Deputy Chief, Enforcement Division

Enclosure

State of Ohio
Office of the Attorney General



William J. Brown
Attorney General

Bruce J. Eklavy
First Assistant Attorney General
James R. Eichel
Chief Counsel
Joel S. Taylor
General Counsel
Henry E. Helling, III
Executive Assistant Attorney General
G. Duane Welsh
Deputy Attorney General

October 29, 1981

Mr. William Tricarico
Secretary
Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

Dear Mr. Tricarico:

The purpose of this communication is to certify to you that the Public Utilities Commission of Ohio regulates the rates, terms and conditions for pole attachments and in regulating these matters it will consider the interests of cable television subscribers as well as the interests of the consumers of utility services.

In 1978 the Public Utilities Commission of Ohio (PUC) initiated a case to determine whether the regulation of pole attachments was the proper subject of PUC jurisdiction. The PUC's interpretation of the State Law existing at that time was that its jurisdiction did not extend to pole attachments. This office notified the Federal Communications Commission (FCC) of such decision in January, 1971.

Recently the Ohio General Assembly passed Amended House Bill No. 223, effective November 2, 1981, whereby the PUC now must regulate pole attachments. This office, as legal representative of the PUC pursuant to Ohio Revised Code Section 4901.17, certifies that the PUC regulates pole attachments as described in the first paragraph, above. (See Entry attached)

Mr. William Triche
Secretary
Page 2
October 29, 1981

If you have any questions concerning this matter,
please direct such inquiries to this office so that this
matter may be completed as expeditiously as possible.

Very truly yours,


DONN D. ROSENBLUM

Assistant Attorney General
Public Utilities Section
375 South High Street
5th Floor
Columbus, Ohio 43215

DDR/jas

AN ACT

To enact sections 4905.71 and 4905.72 of the Revised Code relative to attachments upon the poles, pedestals, and in duct space of telephone, telegraph, and electric light companies and to repeal section 4905.72 of the Revised Code five years after the effective date of this act.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 4905.71 and 4905.72 of the Revised Code be enacted to read as follows:

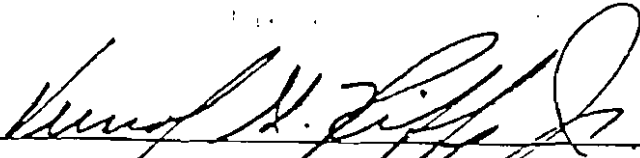
Sec. 4905.71. (A) EVERY TELEPHONE, TELEGRAPH, OR ELECTRIC LIGHT COMPANY, WHICH IS A PUBLIC UTILITY AS DEFINED BY SECTION 4905.02 OF THE REVISED CODE, SHALL PERMIT, UPON REASONABLE TERMS AND CONDITIONS AND THE PAYMENT OF REASONABLE CHARGES, THE ATTACHMENT OF ANY WIRE, CABLE, FACILITY, OR APPARATUS TO ITS POLES, PEDESTALS, OR PLACEMENT OF SAME IN CONDUIT DUCT SPACE, BY ANY PERSON OR ENTITY OTHER THAN A PUBLIC UTILITY THAT IS AUTHORIZED AND HAS OBTAINED, UNDER LAW, ANY NECESSARY PUBLIC OR PRIVATE AUTHORIZATION AND PERMISSION TO CONSTRUCT AND MAINTAIN THE ATTACHMENT, SO LONG AS THE ATTACHMENT DOES NOT INTERFERE, OBSTRUCT, OR DELAY THE SERVICE AND OPERATION OF THE TELEPHONE, TELEGRAPH, OR ELECTRIC LIGHT COMPANY, OR CREATE A HAZARD TO SAFETY. EVERY TELEPHONE, TELEGRAPH, OR ELECTRIC LIGHT COMPANY SHALL FILE TARIFFS WITH THE PUBLIC UTILITIES COMMISSION CONTAINING THE CHARGES, TERMS, AND CONDITIONS ESTABLISHED FOR SUCH USE.

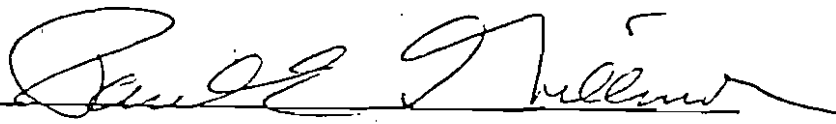
(B) THE PUBLIC UTILITIES COMMISSION SHALL REGULATE THE JUSTNESS AND REASONABLENESS OF

THE CHARGES, TERMS, AND CONDITIONS CONTAINED IN ANY SUCH TARIFF, AND MAY, UPON COMPLAINT OF ANY PERSONS IN WHICH IT APPEARS THAT REASONABLE GROUNDS FOR COMPLAINT ARE STATED, OR UPON ITS OWN INITIATIVE, INVESTIGATE SUCH CHARGES, TERMS, AND CONDITIONS AND CONDUCT A HEARING TO ESTABLISH JUST AND REASONABLE CHARGES, TERMS, AND CONDITIONS, AND TO RESOLVE ANY CONTROVERSY WHICH MAY ARISE AMONG THE PARTIES AS TO SUCH ATTACHMENT.

Sec. 4905.72. THE ANNUAL CHARGES FOR POLE ATTACHMENT AND CONDUIT USE OF EVERY TELEPHONE, TELEGRAPH, AND ELECTRIC LIGHT COMPANY, THAT IS A PUBLIC UTILITY AS DEFINED BY SECTION 4905.02 OF THE REVISED CODE, THAT ARE IN EFFECT ON JULY 1, 1981, SHALL REMAIN IN EFFECT UNTIL JUNE 30, 1982. FOR A PERIOD OF FOUR YEARS, BEGINNING JULY 1, 1982, IF THE TELEPHONE, TELEGRAPH, AND ELECTRIC LIGHT COMPANY THAT IS A PUBLIC UTILITY AS DEFINED IN SECTION 4905.02 OF THE REVISED CODE, ATTEMPTS TO ALTER ITS POLE ATTACHMENT OR CONDUIT USE ANNUAL CHARGES THE GUIDELINES FOR DETERMINING A JUST AND REASONABLE RATE WILL BE TO ASSURE THE COMPANY THE RECOVERY OF NOT LESS THAN THE ADDITIONAL COSTS OF PROVIDING POLE ATTACHMENTS NOR MORE THAN AN AMOUNT DETERMINED BY MULTIPLYING THE PERCENTAGE OF THE TOTAL USABLE SPACE, OR THE PERCENTAGE OF THE TOTAL DUCT OR CONDUIT CAPACITY WHICH IS OCCUPIED BY THE POLE ATTACHMENT, BY THE SUM OF THE OPERATING EXPENSES AND ACTUAL CAPITAL COSTS OF THE COMPANY ATTRIBUTABLE TO THE ENTIRE POLE, DUCT, CONDUIT, OR RIGHT-OF-WAY. AS USED IN THIS SECTION, "USABLE SPACE" MEANS THE SPACE ABOVE THE MINIMUM GRADE LEVEL THAT CAN BE USED FOR THE ATTACHMENT OF WIRES, CABLES, AND ASSOCIATED EQUIPMENT.

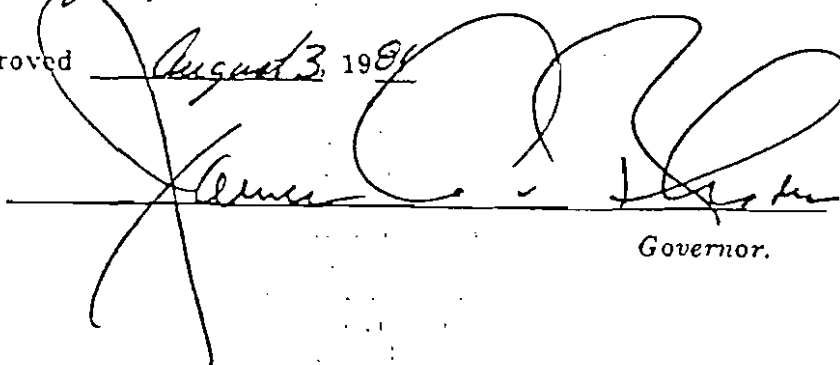
SECTION 2. Section 4905.72 of the Revised Code as enacted by this act is hereby repealed, effective five years from the effective date of this act.


Speaker _____ of the House of Representatives.


President _____ of the Senate.

Passed July 2, 1981

Approved August 3, 1981


Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

David A. Johnston

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the 3rd day of August, A. D. 1981,

Anthony J. Celello
Secretary of State

File No. 75

Effective Date November 2, 1981

BEFORE THE PUBLIC UTILITIES COMMISSION
In the Matter of the Regulation of
the Rates, Terms and Conditions of
Public Utilities having Pole
Attachments by Cable Television
Systems Relating to 47 USC Sections
224 Pursuant to the Ohio Revised Code
Sections 4905.71 and 4905.72.

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)
)
) Case No. 81-1109-AU-UNC
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ENTRY

OCT 22 1981

The Commission, coming now to consider the above-entitled matter finds:

- (1) On February 21, 1978 Public Law 95-234 amending the Communications Act of 1934 to provide for the regulation of utility pole attachments was signed into law. Section 6, 47 USC Section 224, requires the Federal Communications Commission to regulate the rates, terms and conditions for pole attachments by cable television systems except where such matters are regulated by a state.
- (2) The federal statute defines "pole attachment" as "any attachment by a cable television system to a pole duct conduit or right of way owned or controlled by a utility." The term has the same meaning in this Entry except for the modification of "utility" as discussed in Finding No. 3 below.
- (3) This Commission pursuant to recently enacted Sections 4905.71 and 4905.72, Revised Code, pursuant to Amended House Bill No. 223, effective November 2, 1981, will regulate pole attachments of all telephone, telegraph and electric light companies which are public utilities as defined by Section 4905.02, Revised Code, whether or not a company is within the definition of a "utility" as used in the federal statute.
- (4) In regulating the charges, terms and conditions for pole attachments this Commission has authority pursuant to Amended House Bill No. 223, effective November 2, 1981, and Section 4905.71 (B), Revised Code, to consider the interest of cable television entities as well as the interest of the consumers of the utility services. In regulating pole attachments this Commission will consider all of these interests.
- (5) This Commission is by separate letter certifying to the Federal Communications Commission that it regulates the rates, terms and conditions for pole attachments and that in regulating said matters it has authority to consider and does consider the interests of cable television subscribers as well as the interests of the consumers of utility services.

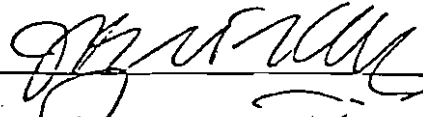
It is, therefore,

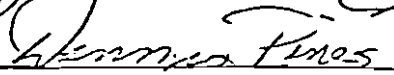
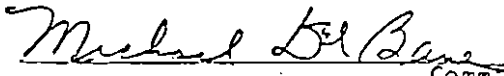
ORDERED, That a copy of this Entry be served upon each telephone, telegraph and electric light company as defined by Section 4905.02 Revised Code. It is, further,

ORDERED, That the certification discussed in Finding (5) above be sent to the Federal Communications Commission. It is, further,

ORDERED, Nothing herein contained shall be deemed binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rates, charges, rules or regulations.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Chairman

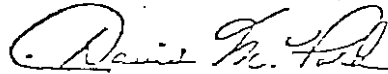


Commissioners

WP:ms

Entered in the Journal

OCT 21 1981

A True Copy



David H. Polk
Secretary

**STATE OF OHIO
PUBLIC UTILITIES COMMISSION
180 EAST BROAD STREET
COLUMBUS, OHIO 43215**

JAMES A. RHODES
GOVERNOR



COMMISSIONERS
C. LUTHER HECKMAN, CHAIRMAN
[REDACTED]
WILLIAM S. NEWCOMB, JR.

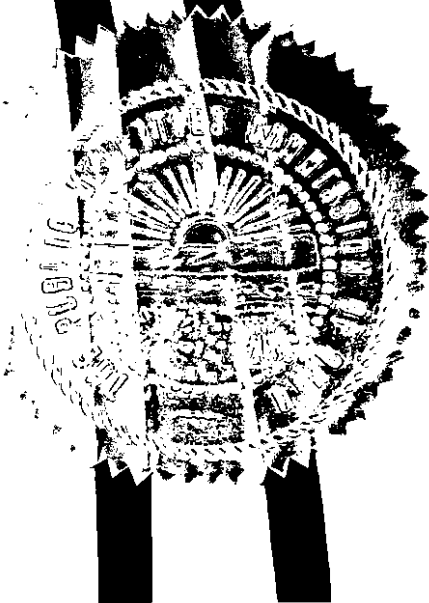
I, RICHARD L. SMITH, the duly appointed and qualified Secretary of the Public Utilities Commission of Ohio, in whose custody the books, papers, records, documents and files of said Commission are kept, hereby certify that the attached is a full, true, correct and complete copy of:

Entry in the Matter of the Regulation of the Rates, Terms and Conditions of Public Utilities Having Pole Attachments by Cable Television Systems, Relating to 47 USC Section 224. Case No. 78-1061-AU-UNC.

TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Public Utilities Commission of Ohio, this 1 day of January, 1979.

A handwritten signature in cursive script, reading "Richard L. Smith".

Richard L. Smith, Secretary
PUBLIC UTILITIES COMMISSION OF OHIO



BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation)
of the Rates, Terms and Conditions)
of Public Utilities Having Pole) Case No. 78-1061-AU-UNC
Attachments by Cable Television)
Systems, Relating to 47 USC Section)
224.)

ENTRY

The Commission, coming now to consider the above-entitled matter, finds:

- 1) On July 26, 1978, the Commission issued an entry which stated that it would regulate the rates, terms and conditions of the attachments made by cable television systems to the poles of electric light and telephone companies as defined in Sections 4905.02 and 4905.03 Revised Code. In accordance with 47 USC Section 224 the Commission certified to the Federal Communications Commission that such pole attachments are regulated by this Commission, and that in regulating these matters it has the authority to consider and does consider the interests of cable televisions subscribers, as well as the interests of the consumers of utility service. A brief discussion of the background of 47 USC Section 224 can be found in the July 26, 1978 Entry and the Commission finds it unnecessary to repeat these details herein.
- 2) The Ohio Cable Television Association and ten cable television companies filed a Petition to Intervene and an Application for Rehearing on August 16, 1978. The Commission granted the Petitioners leave to intervene but denied the request for rehearing. The Association and the cable television companies then filed a timely Notice of Appeal to the Ohio Supreme Court from the July 26, 1978 Entry.
- 3) The Commission asked the Appellants to voluntarily dismiss the appeal so that the Commission could further consider its position on the regulation of attachments made by cable television systems to the poles of electric light and telephone companies under the jurisdiction of this Commission. The appeal was dismissed by entry and mandate from the Ohio Supreme Court dated December 27, 1978.
- 4) The Commission has now determined that the regulation of pole attachments by cable television systems is not within the scope of its jurisdiction as outlined in Sections 4905.04 and 4905.05 Revised Code. The Commission will, by separate letter, notify the Federal Communications Commission that the certification should be revoked.

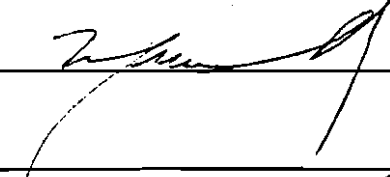
It is, therefore,

ORDERED, That the certification which had been sent to the Federal Communications Commission be revoked as discussed in Finding (4) above. It is, further,

ORDERED, That a copy of this Entry be served upon all parties to the proceeding, and upon each telephone and electric light company as defined by Sections 4905.02 and 4905.03 Revised Code.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Chairman


Commissioners

Entered in the Journal

JUN 18 1978

A True Copy



Richard L. Smith